

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

WP(C).No. 31378 of 2007(I)

PETITIONERS:

- 1. JACOB THOMAS ARIKUPURAM, MANNAR P.O.,
KURATTISSERY VILLAGE, CHENGANNUR TALUK,
ALAPPUZHA DISTRICT.**
- 2. RENU THOMAS, W/O.LATE RENNY THOMAS,
ARIKUPURAM, MANNAR P.O., KURATTISSERY
VILLAGE, CHENGANNUR TALUK.**
- 3. BOBBY A.THOMAS, S/O.RENNY THOMAS,
ARIKUPURAM, MANNAR P.O., KURATTISSERY
VILLAGE, CHENGANNUR TALUK, ALAPPUZHA
DISTRICT.**
- 4. BINO A.THOMAS, S/O.RENNY THOMAS,
ARIKUPURAM, MANNAR P.O., KURATTISSERY,
VILLAGE, CHENGANNUR TALUK.**

BY ADV. SRI.M.C.JOHN

RESPONDENTS:

- 1. THE STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, F & WLD,
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE CUSTODIAN (ECOLOGICALLY FRAGIL LAND)
& CHIEF CONSERVATOR OF FORESTS,
THIRUVANANTHAPURAM.**
- 3. THE CONSERVATOR OF FORESTS,
NORTHERN CIRCLE, KANNUR.**
- 4. THE DIVISIONAL FOREST OFFICER,
KOZHIKODE.**

BY SPL. GOVERNMENT PLEADER SRI.RENJITH THAMPAN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30/11/2007, THE COURT ON 06/12/2007 DELIVERED THE
FOLLOWING:**

ANTONY DOMINIC, J.
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W.P.(C) NO. 31378 OF 2007 I
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Dated this the 6th day of December, 2007

J U D G M E N T

Petitioners are claiming ownership of 55 acres of land by virtue of sale deed Nos.585/1967 and 584/1967 of S.R.O, Mannar. They also claim ownership over another 22½ acres of land devolved on them on the death of their father. Relying on Ext.P1, a certificate issued by the Divisional Forest Officer, Kozhikode, it is stated that the land in question is a registered and fully planted coffee estate. On the coming into force of the Kerala Private Forests (Vesting and Assignment) Act, 1971, the land in question was treated as a vested private forest and thereupon petitioners filed OA 16/1981 and 17/1981 before the Forest Tribunal, which were disposed of by judgment dated 29/9/86, whereby the applications were allowed and the land in question was declared as a developed coffee plantation, not liable to be vested under the provisions of the Vesting Act.

2. It is stated that respondents in the OA filed MFA 300/89 before this court against the common judgment of the Tribunal and the appeal was dismissed by Ext.P2 judgment dated 30/9/93. The land was finally restored to the petitioners on

30/6/94. According to the petitioners, when they were carrying out agricultural operations in their coffee estate, by Ext.P5 letter they were informed that the land was included at Sl.No.9 of Ext.P6, declaring it to be an ecologically fragile land under the provisions of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Ordinance, 2001.

3. Thereupon, they filed WP(C) No.19671/04, praying inter alia to compel the respondents to de-notify the land. That writ petition was disposed of by Ext.P7 judgment directing the 2nd respondent or the Custodian appointed under the Act, which was promulgated in the meanwhile, to consider the applications submitted under Section 19(3)(b) of the Act, with sufficient opportunity of hearing to the petitioners. As the matter was thus remanded for the fresh consideration of the 2nd respondent, an opportunity of hearing was granted to the petitioners on 30/3/07.

4. In the meanwhile, in terms of Rule 18 of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Rules, 2007, notified on 3/2/07, a Committee consisting of the Divisional Forest Officer, Kozhikode, the Working Plan Officer,

Kozhikode and the Technical Assistant to Conservator of Forests, Northern Circle, Kannur was constituted and the Committee inspected the land belonging to the petitioners and submitted its report on 19/3/07. When the petitioners appeared for personal hearing on 30/3/07, they inter alia submitted that they were not aware of the committee's report and that the committee did not put them on notice when they visited the land and on this basis, requested for one more inspection by the Committee with notice to them so that they could convince the Committee that the land does not answer the definition of Ecologically Fragile Land. It is seen that reiterating this request, they have also send Ext.P9 to the 2nd respondent.

5. However, the 2nd respondent passed Ext.P8 order rejecting this request and held the land to be an Ecologically Fragile Land. The request of the petitioners has been dealt with in Ext.P8 in the following terms.

The role of the Committee is to assess the ground reality with respect to the provision of the Act. Since another inspection is not going to materially change the status on the ground, the request of the petitioner was not considered.

On going through the submissions made by the petitioners and the detailed report submitted by the Committee, I am convinced that the area of 31 Hectares in Sy.No.149 in Koodaranji Village of Kozhikode Taluk is surrounded by Government Forest and predominantly supporting natural forest vegetation and therefore liable to be vested under Section 3 of the Kerala Forest (Vesting and Management Ecologically Fragile Lands) Act 2003.

Thereafter the Custodian issued Ext.P8(a) to the petitioners that the land will continue to be vested in the Government as it answered the description of ecologically fragile land as on 2/6/2000. It is in this context, this writ petition has been filed.

6. A reading of the prayers made in the writ petition shows that several reliefs have been sought for. However, the only contention that was pressed before me when the writ petition came up for consideration was that the respondents ought to have given notice to the petitioners at the time of inspection and that the said report ought to have been disclosed to them before it was relied on by the 2nd respondent.

7. In view of the limited nature of the contention that has been urged before me, a statement was directed to be filed and the 2nd respondent filed statement dated 28th November, 2007. The complaint of the petitioners that they were not given notice

of inspection has been dealt with in Para 12 of the statement, which is extracted below for reference.

It is humbly submitted that the petitioners were given sufficient opportunity of hearing before Ext.P8 order was passed, as directed in Ext.P7 judgment. The allegation that the petitioner was not given notice, before the committee constituted under Rule 18 inspected the property and hence the proceedings is invalid, is not correct. It is brought to the kind notice of this Hon'ble Court that there is no provision under Rule 18 that at the time of inspection of the land, the petitioner should be given notice. Moreover, the previous experience is that when such previous notice was issued, before the inspection of the committee, the ex-owner very likely would plant some coffee, rubber or other plants, prior to visit of committee and that when the said plants are removed by the forest officials, video graph will be taken and allegation will be made that the forest officials are destroying the plant in order to make the land within the provisions of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act 2003. There are atleast two Contempt of Court Cases filed, making the similar allegation. Thus, it was decided that the inspection by the Committee constituted under Section 80, will be without notice to the ex-owner so that the actual state of affairs, can be reported. The report of the Committee is only a piece of evidence, which is relevant, only under Rule 20 of the Ecologically Fragile Land Rules. Moreover, the non-issuance of prior notice, before the inspection by the Committee will not render the entire proceedings illegal.

8. Thus, the pleadings would show that while the petitioners complain that they were not given notice before the inspection, and that the report of the Committee was not disclosed, the Custodian would contend that it was unnecessary

to have given notice of inspection. In the light of the narrow controversy that I am called upon to examine, I need only to consider whether the Committee ought to have given notice before inspecting the land and whether their failure to give such notice and the failure of the Custodian to disclose the report to the petitioners, was in violation of the principles of natural justice.

9. It is the specific contention of the petitioners that the land in question was a fully developed and registered coffee plantation and they rely on Ext.P1 certificate. They have also stated that the land was restored to them after several years only on 30/6/94 and that due to neglect in the meanwhile and carelessness of their care taker, natural growth has taken place.

10. In Ext.P8 order, the 2nd respondent has given the details of the tree growth in the sample plots in the land of the petitioners. Ext.P8 discloses that there are still coffee plants, though not much in number. Petitioners being the owners of the land, when they are deprived of their very ownership of the land and that too, even without compensation, are only contending

that when the Committee inspects the land , notice be given to them so that they could convince the Committee that the land does not come under the definition of Ecologically Fragile Land as defined in the Act. This request of the petitioners has been turned down by the 2nd respondent and one of the reasoning of the 2nd respondent is that there is no provision in Rule 18 for giving notice. This contention is totally unacceptable since compliance with natural justice is essential in any enquiry and giving notice to a person adversely affected is an elementary principle thereof.

11. It is the settled position that the principles of natural justice need not be complied with when it is specifically excluded. Custodian has no case that giving of notice has been excluded by any provision to that effect either in Rule 18 or elsewhere in the rules. That apart, the other reason stated is that if notice is given, there is a possibility of the affected persons altering the nature of the land. If natural justice requires that notice should be given to a person affected, the possibility of such an opportunity being abused by affected person, is no reason to dispense with the requirement of compliance of the principles of

natural justice. Even a statutory provision does not get invalidated merely because of a possibility of it being abused. Therefore, this reasoning of the 2nd respondent is not sustainable. That apart, I cannot believe that the nature of land and that too, such a vast extent, can be altered in such a short time, as apprehended by the 2nd respondent.

12. The Custodian himself admits that the report of the Committee is a piece of evidence. If inspection of the Committee is for collection of a piece of evidence, collection of such a piece of evidence behind the back of the affected person is not an action, that can be upheld. Therefore, in my considered view, the Committee ought to have given notice to the petitioners before it inspected the land.

13. The matter does not end there. Even a piece of evidence that is collected with notice to the person affected, has to be disclosed to the affected person and if it is relied on without disclosing it to the affected party, that again is in violation of the principles of natural justice. In this case, Custodian has no case that the report of the Committee was disclosed to the petitioners

at any time before it was relied on against them when he held the enquiry under Section 19(3)(b) of the Act and passed Ext.P8 order. For these reasons, I cannot sustain the action of the Custodian.

14. Therefore, I hold that the action of the Committee in inspecting the land without notice to the petitioners is in violation of the principles of natural justice. Further action of the 2nd respondent in relying on the report submitted by the Committee without disclosing the contents thereof to the petitioners is also in violation of the principles of natural justice.

15. For these reasons, Ext.P8 will stand quashed and the 2nd respondent is directed to require the Committee to inspect the petitioners land with notice to them and furnish a copy of the report of the Committee to the petitioners and then take a fresh decision in the matter with notice and opportunity to the petitioners and other affected persons, if any.

Writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE.

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